IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ramlal v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.5997/2003
under Article 226 of the Constitution of India.

Date of Order : 26th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. C.S.Bissa, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

BY THE COURT :

An appointment was given to the petitioner as Sweeper w.e.f. 1.3.1994 at a hostel controlled and administered by Tribal Area Development Department at Bichhiwada in District Dungarpur. The services of the petitioner were discontinued in pursuance of an order dated 30.3.2000 passed by Commissioner, Tribal Area Development Department, Udaipur.

The petitioner, being aggrieved by discontinuation of his services, preferred a writ petition before this Court and the same was registered as SBCivil Writ Petition No.3894/2000, Ramlal v. State of Rajasthan & Ors.. The writ petition preferred by

the petitioner was disposed of by this Court vide the order dated 27.9.2001. This Court, while holding the order terminating the petitioner and other similarly situated persons liable to be quashed, held as under:-

> "The order passed by the State Government not granting relaxation without giving any reason and specifying as what is the minimum qualification for the said post and why it cannot be relaxed in case of the sweepers, is silent on these points, therefore, the impugned termination order is liable to be quashed. However, looking to the facts and circumstances of the case and in order to meet the ends of justice, it is desireable that the respondents be directed to reconsider the case of the petitioners and other similarly situated sweepers whose services had been terminated by the same impugned order dated 31.3.2000 in pursuance of the State Government order 30.3.2000, within a period of ten weeks from the date of filing a certified copy of this order before respondents No.1 and 2. The said respondents are requested to reconsider the case in the light of the judgment and order of the Hon'ble Supreme Court dated 31.3.1996, a copy of which shall also be placed by the petitioners before the said authorities alongwith their representations. Atleast, the sanctioned posts of sweepers lying vacant today should be filled up considering the cases of the petitioners and other similarly situated persons according to their seniority and suitability and to consider the case of others whenever the vacancies become available. It is clarified

> further that for the past period, the petitioners or other such persons who are granted the benefit of this order, shall not be entitled for back wages."

Though the order terminating the petitioner from services was held liable to be quashed but the respondents did not choose to reinstate the petitioner in pursuant to the judgment dated 27.9.2001. The petitioner submitted a representation to the Commissioner, Tribal Area Development Department, Udaipur, and claimed for objective reconsideration of his case for regularisation of service. The representation submitted by the petitioner, to get his services regularised in light of the directions given by order dated 27.9.2001, was rejected by the Commissioner, Tribal Area Development Department by an order dated 16.1.2002 on the count that the petitioner does not possess requisite qualification for appointment to the post of Class-IV employee.

Being aggrieved by the order dated 16.1.2002 this writ petition is preferred by the petitioner invoking extra ordinary jurisdiction of this Court.

The contention of the counsel for the petitioner is that the respondents should have first reinstated him in services in pursuance of the directions given by this Court by judgment dated 27.9.2001 and thereafter should have considered his

representation for granting relaxation in qualification. It is also contended by the counsel for the petitioner that there was no just and valid reason for not relaxing the requirement of qualification to hold the post of sweeper. According to the counsel for the petitioner the experience acquired by him by serving the department for a period of more than six years compensates the qualification prescribed for recruitment to the post of a sweeper, specially in the circumstances that the power of relaxation is vested with the respondents and further a direction was given by the Court to consider his case in light of the direction given by the Hon'ble Supreme Court.

The contentions of the counsel for the petitioner are contested by learned Additional Government Advocate. The contention of the counsel for the State is that the appointment of the petitioner was dehore the rules and, therefore, no right accrues in his favour for regularisation of the services. He has further stated that the petitioner lacks qualification for appointment to the post of sweeper and the competent authority after considering all aspects of the matter reached at the conclusion that no relaxation should be extended then this Court should not interfere while exercising powers under extra ordinary jurisdiction with the discretion exercised by the competent authority.

I have heard counsel for the parties.

The services of Class-IV employees working in various department of Government of Rajasthan are regulated by Rajasthan Class IV Services (Recruitment and Other Service Conditions) Rules, 1963 (hereinafter referred to as “the Rules of 1963”). Rule 10 of the Rules of 1963 prescribes that a candidate for direct recruitment to the post specified in schedule shall possess the qualification given in the column 4 of the schedule and working knowledge of Hindi written in Devnagri script. In schedule 1 appended with the Rules of 1963 there is no post in the name of sweeper, however, clause (7) of entry No.3 relates to equivalent post sanctioned for office work in the lowest scale. The post of sweeper being a post equivalent to the post of peon is covered under sub-clause(7). Recruitment to all the posts mentioned in entry No.3 in schedule 1 are required to be filled in 100% by way of direct recruitment and the minimum qualification for appointment to the posts referred in entry No.3 is that the incumbent must have passed Class Vth from a recognised school. A note given in clause (6) of schedule 1 empowers the appointing authority to relax the qualification, if sufficient number of candidates belonging to Scheduled Castes or Scheduled Tribes are not available, if sufficient

women candidates are not available for Class-IV female posts and for an ex-serviceman having three years service as a serviceman.

In the present case it is an admitted position that the petitioner does not possess the educational qualification as prescribed under the Rules of 1963, however, the appointing authority has exercised the powers of relaxation in case of number of other employees similarly situated to the petitioner as it is apparent from perusal of an order placed on record by the petitioner as Anx.3 dated 1.4.2003. By this order, relaxation in educational qualification and age was granted to number of employees similarly situated to the petitioner while regularising their services in Class-IV cadre. It is pertinent to note that relaxation was granted by the appointing authority under the order dated 1.4.2003 in pursuant to the recommendations made by the screening committee constituted under the directions given by Hon'ble Supreme Court in S.L.P.No.9673/96 decided on 22.7.1996.

It is true that when a statute provides a specific qualification for recruitment to a specific post then in normal course it should not be relaxed, however, in exceptional circumstances power of relaxation must be exercised fairly, objectively and with view to complete the circuit of justice. In the

present case the petitioner was working with the respondents since 1994 and that too on the lowest post in Class-IV cadre. The long experience possessed by the petitioner could be equitable with qualification i.e. of passing class Vth from a recognised institution.

I failed to understand as to why the relaxation has not been extended in favour of the petitioner though the same was made in favour of number of other employees as it is apparent from perusal of the order Anx.3. The petitioner is claiming appointment to a post which is at the lowest pedestal in the hierarchy of the Government servants and which is normally occupied by the persons belonging to the lowest rung of the social order. The petitioner is a member of Scheduled Caste having experience of about more than six years to work as sweeper, therefore, sufficient reason was available with the appointing authority to extend relaxation in favour of the petitioner to regularise his services as such.

In view of whatever discussed above, the writ petition is allowed. The order Anx.7 dated 16.1.2002 passed by the Commissioner, Tribal Area Development Department is hereby quashed. The respondents are directed to reinstate the petitioner in services as a sweeper and further to regularise his services as sweeper by relaxing the condition

pertaining to qualification to hold the post of sweeper. The petitioner shall also be entitled for all consequential benefits.

(GOVIND MATHUR),J.

kkm/ps.